



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3660

Introduced 2/28/2007, by Rep. Julie Hamos

SYNOPSIS AS INTRODUCED:

750 ILCS 5/601	from Ch. 40, par. 601
755 ILCS 5/11-3.1 new	
755 ILCS 5/11-5	from Ch. 110 1/2, par. 11-5
755 ILCS 5/11-7	from Ch. 110 1/2, par. 11-7
755 ILCS 5/11-10.2 new	
755 ILCS 5/11-10.3 new	
755 ILCS 5/11-10.4 new	
755 ILCS 5/11-10.5 new	
755 ILCS 5/11-10.6 new	

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a child custody proceeding may be commenced by a biological, adoptive, or "intended parent" only (instead of by a parent) and deletes provisions authorizing commencement of a child custody proceeding by a person other than a parent. Provides that a person is an "intended parent" if he or she is not a biological or adoptive parent to the child, is or was in a committed intimate relationship with a child's custodial parent, lives or lived with the minor child and the child's custodial parent for no less than 2 consecutive years, within no more than 6 months prior to the filing of the petition for custody, and together with the child's custodial parent held himself or herself out to the community and to the child as the child's parent. Sets forth exceptions. Changes provisions concerning notice of a child custody proceeding, notice of proceedings for modification of a previous custody order, and appointment of an attorney for a minor child or child's representative. Amends the Probate Act of 1975. Makes various changes regarding who may file a petition for guardianship of the person of a child, rights to custody, the standard for appointing a guardian of the person of a child, the rights and obligations of a guardian of the person of a child, the duration of a guardianship of the person of a child, vacating a guardianship, and termination of a guardianship. Effective January 1, 2008.

LRB095 09407 AJ0 32269 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 601 as follows:

6 (750 ILCS 5/601) (from Ch. 40, par. 601)

7 Sec. 601. Jurisdiction; Commencement of Proceeding.

8 (a) A court of this State competent to decide child custody
9 matters has jurisdiction to make a child custody determination
10 in original or modification proceedings as provided in Section
11 201 of the Uniform Child-Custody Jurisdiction and Enforcement
12 Act as adopted by this State.

13 (b) A child custody proceeding is commenced in the court:

14 ~~(1)~~ by a biological, adoptive or intended parent only,
15 by filing a petition:

16 (i) for dissolution of marriage or legal
17 separation or declaration of invalidity of marriage;
18 or

19 (ii) for custody of the child, in the county in
20 which he is permanently resident or found.†

21 (b-5) A person is an "intended parent" if he or she:

22 (1) is not a biological or adoptive parent to the
23 child; and

1 (2) is or was in a committed intimate relationship with
2 a child's custodial parent; and

3 (3) lives or lived with the minor child and the child's
4 custodial parent for no less than 2 consecutive years,
5 within no more than 6 months prior to the filing of the
6 petition for custody; and

7 (4) together with the child's custodial parent, held
8 himself or herself out to the community and to the child as
9 the child's parent.

10 A person shall not be deemed an intended parent if: (i) the
11 child's non-custodial parent had contact with the child
12 affirming his or her parental status during the period of
13 cohabitation between the petitioner and the child's custodial
14 parent; or (ii) the non-custodial parent proves that the
15 custodial parent intentionally concealed the child from the
16 non-custodial parent, preventing contact affirming parental
17 status during the period of cohabitation between the petitioner
18 and the child's custodial parent. For purposes of this
19 provision, a parent's regular payment of child support shall be
20 considered contact with the child affirming his or her parental
21 status.

22 ~~(2) by a person other than a parent, by filing a~~
23 ~~petition for custody of the child in the county in which he~~
24 ~~is permanently resident or found, but only if he is not in~~
25 ~~the physical custody of one of his parents; or~~

26 ~~(3) by a stepparent, by filing a petition, if all of~~

1 ~~the following circumstances are met:~~

2 ~~(A) the child is at least 12 years old;~~

3 ~~(B) the custodial parent and stepparent were~~
4 ~~married for at least 5 years during which the child~~
5 ~~resided with the parent and stepparent;~~

6 ~~(C) the custodial parent is deceased or is disabled~~
7 ~~and cannot perform the duties of a parent to the child;~~

8 ~~(D) the stepparent provided for the care, control,~~
9 ~~and welfare to the child prior to the initiation of~~
10 ~~custody proceedings;~~

11 ~~(E) the child wishes to live with the stepparent;~~
12 ~~and~~

13 ~~(F) it is alleged to be in the best interests and~~
14 ~~welfare of the child to live with the stepparent as~~
15 ~~provided in Section 602 of this Act.~~

16 ~~(4) When one of the parents is deceased, by a~~
17 ~~grandparent who is a parent or stepparent of a deceased~~
18 ~~parent, by filing a petition, if one or more of the~~
19 ~~following existed at the time of the parent's death:~~

20 ~~(A) the surviving parent had been absent from the~~
21 ~~marital abode for more than one month without the~~
22 ~~deceased spouse knowing his or her whereabouts;~~

23 ~~(B) the surviving parent was in State or federal~~
24 ~~custody; or~~

25 ~~(C) the surviving parent had: (i) received~~
26 ~~supervision for or been convicted of any violation of~~

~~Article 12 of the Criminal Code of 1961 directed towards the deceased parent or the child; or (ii) received supervision or been convicted of violating an order of protection entered under Section 217, 218, or 219 of the Illinois Domestic Violence Act of 1986 for the protection of the deceased parent or the child.~~

(c) Notice of a child custody proceeding, including an action for modification of a previous custody order, shall be given to each of the child's biological, adoptive, and intended parents and to the child's guardian, if any ~~and custodian~~, who may appear, be heard, and file a responsive pleading. The court, upon showing of good cause, may permit intervention of other interested parties.

(d) Proceedings for modification of a previous custody order commenced more than 30 days following the entry of a previous custody order must be initiated by serving a written notice and a copy of the petition for modification upon the child's biological, adoptive, and intended parent and upon the child's guardian, if any, ~~and custodian~~ at least 30 days prior to hearing on the petition. Nothing in this Section shall preclude a party in custody modification proceedings from moving for a temporary order under Section 603 of this Act.

(e) (Blank).

(f) The court shall, at the court's discretion or upon the request of any party entitled to petition for custody of the child, appoint a guardian ad litem, attorney for the minor

1 child, or child's representative, to represent the best
2 interest of the child for the duration of the custody
3 proceeding or for any modifications of any custody orders
4 entered. Nothing in this Section shall be construed to prevent
5 the court from appointing the same guardian ad litem for 2 or
6 more children that are siblings or half-siblings.

7 (Source: P.A. 93-108, eff. 1-1-04; 93-1026, eff. 1-1-05.)

8 Section 10. The Probate Act of 1975 is amended by changing
9 Sections 11-5 and 11-7 and by adding Sections 11-3.1, 11-10.2,
10 11-10.3, 11-10.4, 11-10.5, and 11-10.6 as follows:

11 (755 ILCS 5/11-3.1 new)

12 Sec. 11-3.1. Standing to file for guardianship of the
13 person of a minor. Any person who is interested in caring for a
14 minor while the minor's parents are unfit to make and carry out
15 day-to-day decisions for the minor has standing to file a
16 petition for guardianship of the person of the minor.

17 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)

18 Sec. 11-5. Appointment of guardian.

19 (a) Upon the filing of a petition for the appointment of a
20 guardian or on its own motion, the court may appoint a guardian
21 of the estate or of both the person and estate, of a minor, or
22 may appoint a guardian of the person only of a minor or minors,
23 as the court finds to be in the best interest of the minor or

1 minors.

2 (a-1) A parent, adoptive parent or adjudicated parent,
3 whose parental rights have not been terminated, may designate
4 in any writing, including a will, a person qualified to act
5 under Section 11-3 to be appointed as guardian of the person or
6 estate, or both, of an unmarried minor or of a child likely to
7 be born. A parent, adoptive parent or adjudicated parent, whose
8 parental rights have not been terminated, or a guardian or a
9 standby guardian of an unmarried minor or of a child likely to
10 be born may designate in any writing, including a will, a
11 person qualified to act under Section 11-3 to be appointed as
12 successor guardian of the minor's person or estate, or both.
13 The designation must be witnessed by 2 or more credible
14 witnesses at least 18 years of age, neither of whom is the
15 person designated as the guardian. The designation may be
16 proved by any competent evidence. If the designation is
17 executed and attested in the same manner as a will, it shall
18 have prima facie validity. The designation of a guardian or
19 successor guardian does not affect the rights of the other
20 parent in the minor.

21 (b) The court lacks jurisdiction to proceed on a petition
22 for the appointment of a guardian of a minor if (i) the minor
23 has a living biological, adoptive, or intended parent, ~~adoptive~~
24 ~~parent or adjudicated parent,~~ whose parental rights have not
25 been terminated, whose whereabouts are known, and who is
26 willing and able to make and carry out day-to-day child care

1 decisions concerning the minor; ~~unless the parent or parents~~
2 ~~consent to the appointment or, after receiving notice of the~~
3 ~~hearing under Section 11-10.1, fail to object to the~~
4 ~~appointment at the hearing on the petition~~ or (ii) there is
5 already a guardian for the minor appointed by a court of
6 competent jurisdiction. There shall be a rebuttable
7 presumption that a parent of a minor is willing and able to
8 make and carry out day-to-day child care decisions concerning
9 the minor, but the presumption may be rebutted by a
10 preponderance of the evidence.

11 The term "intended parent" shall have the same meaning as
12 in subsection (b-5) of Section 601 of the Illinois Marriage and
13 Dissolution of Marriage Act.

14 (b-1) If the court finds the appointment of a guardian of
15 the minor to be in the best interest of the minor, and if a
16 standby guardian has previously been appointed for the minor
17 under Section 11-5.3, the court shall appoint the standby
18 guardian as the guardian of the person or estate, or both, of
19 the minor unless the court finds, upon good cause shown, that
20 the appointment would no longer be in the best interest of the
21 minor.

22 (c) If the minor is 14 years of age or more, the minor may
23 nominate the guardian of the minor's person and estate, subject
24 to approval of the court. If the minor's nominee is not
25 approved by the court or if, after notice to the minor, the
26 minor fails to nominate a guardian of the minor's person or

1 estate, the court may appoint the guardian without nomination.

2 (d) The court shall not appoint as guardian of the person
3 of the minor any person whom the court has determined had
4 caused or substantially contributed to the minor becoming a
5 neglected or abused minor as defined in the Juvenile Court Act
6 of 1987 unless 2 years have elapsed since the last proven
7 incident of abuse or neglect and the court determines that
8 appointment of such person as guardian is in the best interests
9 of the minor.

10 (e) Previous statements made by the minor relating to any
11 allegations that the minor is an abused or neglected child
12 within the meaning of the Abused and Neglected Child Reporting
13 Act, or an abused or neglected minor within the meaning of the
14 Juvenile Court Act of 1987, shall be admissible in evidence in
15 a hearing concerning appointment of a guardian of the person or
16 estate of the minor. No such statement, however, if
17 uncorroborated and not subject to cross-examination, shall be
18 sufficient in itself to support a finding of abuse or neglect.

19 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
20 90-796, eff. 12-15-98.)

21 (755 ILCS 5/11-7) (from Ch. 110 1/2, par. 11-7)

22 Sec. 11-7. Superior parental ~~Parental~~ right to custody.) If
23 the biological, adoptive, and intended ~~both~~ parents of a minor
24 are living and are competent to transact their own business and
25 are fit persons, they are entitled to the custody of the person

1 of the minor and the direction of his education as against all
2 non-parents. If one parent is dead and a ~~the~~ surviving parent
3 is competent to transact his own business and is a fit person,
4 he is similarly entitled. The parents have equal powers, rights
5 and duties concerning the minor in the absence of a court order
6 directing otherwise. ~~If the parents live apart, the court for~~
7 ~~good reason may award the custody and education of the minor to~~
8 ~~either parent or to some other person.~~

9 (Source: P.A. 79-328.)

10 (755 ILCS 5/11-10.2 new)

11 Sec. 11-10.2. Standard for appointing guardian of the
12 person. The court may appoint a petitioner as guardian of the
13 person of a minor if the court finds that the petitioner meets
14 the qualifications set forth in Section 11-3 of this Act and:

15 (1) the petitioner has exercised due diligence in
16 giving notice of the pendency of the petition to the
17 minor's biological, adoptive, and intended parents, if
18 any;

19 (2) the minor's biological, adoptive, and intended
20 parents have either (a) consented in writing or in open
21 court to the petition for guardianship; or (b) failed to
22 object after having been given notice of the pendency of
23 the proceedings; or (c) been proven by the petitioner,
24 following a hearing, to be unfit to care for the minor;

25 (3) the petitioner is able and willing to make and

1 carry out day-to-day decisions for the minor; and

2 (4) the petitioner is able and willing to meet the
3 other obligations of a guardian of the person of the minor.

4 (755 ILCS 5/11-10.3 new)

5 Sec. 11-10.3. Rights and obligation of guardian of the
6 person. A person who has been appointed guardian of the person
7 of a minor has the right and the obligation to make and carry
8 out necessary and appropriate day-to-day decisions for the
9 minor, including enrolling the minor in school and authorizing
10 medical care for the minor. The guardian of the person of a
11 minor has the obligation to foster a positive relationship
12 between the minor and the minor's biological, adoptive, and
13 intended parents, including facilitating visitation between
14 the minor and his or her parents, unless a court order provides
15 otherwise.

16 (755 ILCS 5/11-10.4 new)

17 Sec. 11-10.4. Duration of guardianship. Once the court has
18 appointed a person to be guardian of the person of a minor, the
19 guardian shall remain the minor's guardian throughout the
20 minor's minority, unless a successor guardian of the person is
21 appointed, subject to the rights of the minor's biological,
22 adoptive, and intended parents to seek vacation or termination
23 of the guardianship.

1 (755 ILCS 5/11-10.5 new)

2 Sec. 11-10.5. Vacating a guardianship of the person of a
3 minor. Upon motion by a minor's biological, adoptive, or
4 intended parent, if the court finds that a guardian of the
5 person of a minor failed to give proper notice of the pendency
6 of the petition for guardianship to the minor's biological,
7 adoptive, or intended parents, when the petitioner knew or
8 should have known of the existence and whereabouts of the
9 minor's biological, adoptive, or intended parents, the court
10 shall vacate the guardianship and order the return of the minor
11 to the custody of the minor's biological, adoptive, or intended
12 parent.

13 (755 ILCS 5/11-10.6 new)

14 Sec. 11-10.6. Termination of guardianship of the person of
15 a minor. A minor's biological, adoptive, and intended parents
16 may petition the court to terminate a guardianship of the
17 person of his or her or their minor child whenever there has
18 been a substantial change in the parent's circumstances since
19 the petition for guardianship was granted. Except as otherwise
20 provided herein, if the court finds that there has been a
21 substantial change in the parent's circumstances since the
22 petition for guardianship was granted, the court shall
23 terminate the guardianship of the person of the minor and order
24 the return of the minor to the custody of the minor's
25 biological, adoptive, or intended parent, unless the guardian

1 of the person of the minor meets his or her burden of proving
2 to the court that the parent petitioning to terminate the
3 guardianship remains unfit to care for the minor. If a period
4 of more than 5 years, or half the minor's lifetime, whichever
5 is shorter, has passed since the petition for guardianship of
6 the person of the minor was granted, then the standard for
7 terminating the guardianship shall be whether it is in the
8 minor's best interest to terminate the guardianship.

9 Section 99. Effective date. This Act takes effect January
10 1, 2008.